

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 63332-5-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
ALEXANDER SNEKTKOV, [†])	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 19, 2010
)	

Lau, J. — Alexander Snetkov appeals the sentencing court’s erroneous oral advisement prohibiting him from possessing firearms and being “around people that possess firearms.” We grant discretionary review and strike the oral advisement in favor of the written statutory advisement.

FACTS

A jury convicted Alexander Snetkov of attempting to elude a pursuing police vehicle and possession of a stolen vehicle. These convictions rendered Snetkov

[†] The correct spelling, “Alexander Snetkov,” will be used in this opinion.

ineligible to possess a firearm. At sentencing, Snetkov signed a correctly worded notice of ineligibility to possess firearms and loss of right to vote that provided, in part, "Pursuant to RCW 9.41.047, you are not permitted to possess a firearm until your right to do so is restored by a court of record. You are further notified that you must immediately surrender any concealed pistol license." And the court also orally notified Snetkov about the firearm possession prohibition.

THE COURT: Sign the fingerprint card. And also, Mr. Snetkov, you have signed the Notice of Ineligibility to Possess Firearms, and Loss of Right to Vote. As a result of this conviction, you may not possess any type of firearm at all, or be around people that possess firearms. Do you understand? You have to say "yes" or "no."

MR. SNETKOV: Yes.

Verbatim Report of Proceedings (VRP) (Apr. 2, 2009) at 22.

In his appeal from these convictions, the sole issue raised is the court's oral advisement, "you may not possess any type of firearm at all, or be around people that possess firearms." (Emphasis added.) Snetkov argues that this advisement misstates the law and implicates his constitutional rights to travel and associate. A commissioner of this court referred the question of appealability and any relief on appeal to a panel of judges.

ANALYSIS

Appealability

Because there is no order or any portion of the judgment and sentence that precludes Snetkov from being around people who possess firearms, the oral advisement is not a final judgment appealable as a matter of right. See RAP 2.2(a)(1).

We turn next to whether he is entitled to discretionary review under RAP 2.3.

Snetkov maintains that under RAP 2.3(b)(2), the advisement constitutes probable error which substantially alters the status quo by limiting his constitutional rights to travel and associate. He relies on RAP 2.3(b)(3) to argue, “[T]he trial court likely gives this same warning in all cases . . . this is a matter of substantial public importance calling for review of the matter by an appellate court.” On this point, we note that in another case pending before this court, State v. Lee, No. 63497-6, a different sentencing court gave a similar erroneous oral advisement.

Mr. Lee, I'm holding up a very important document. This is your notice of ineligibility to possess a firearm and loss of your right to vote. When we say, "possess a firearm," we don't just mean own a firearm, we mean be anywhere near a firearm. So you cannot be in the same house or the same car with a firearm.

2 VRP (Apr. 17, 2009) at 7 (emphasis added). Because the issue involves probable error by the sentencing court that substantially alters the status quo by limiting Snetkov’s constitutional freedoms and because the error is not isolated, we grant discretionary review.

Accuracy of Oral Admonishment and Remedy¹

Under RCW 9.41.047(1), a court is required to notify a defendant about the loss of his or her right to possess a firearm.

¹ The State argues that regardless of appealability, this court should not reach the merits because Snetkov failed to object to the advisement at sentencing. But the State fails to address the rule that errors at sentencing are not waived if not objected to. See State v. Armstrong, 91 Wn. App. 635, 638–39, 959 P.2d 1128 (1998) (allowing challenge to community placement conditions and noting that courts have allowed challenges to restitution orders and offender scores where not objected to at sentencing).

At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(Emphasis added.) And a person is guilty of unlawful possession of a firearm in the second degree if he or she owns or possesses a firearm after being convicted of a felony. RCW 9.41.040(2)(a)(i).

The court's oral advisement that Snetkov could not possess any firearms "or be around people that possess firearms" is erroneous for two reasons. First, the advisement misstates the law on constructive possession. Mere proximity to someone in possession of contraband is insufficient to establish constructive possession. State v. Turner, 103 Wn. App. 515, 512, 13 P.3d 234 (2000). But the written notice he signed at his sentencing hearing correctly advised him that he is "not permitted to possess a firearm." "Possession" includes actual and constructive possession. And the oral advisement fails to comply with the statutory advisement.

Accordingly, we strike the court's oral advisement in favor of the accurately worded written advisement, "Pursuant to RCW 9.41.047, you are not permitted to possess a firearm until your right to do so is restored by a court of record. You are further notified that you must immediately surrender any concealed pistol license."

Snetkov asks this court to "remand for resentencing, at which the sentencing court accurately explains the law regarding the restriction on Snetkov's right to possess a firearm." Br. of Appellant at 8. Because

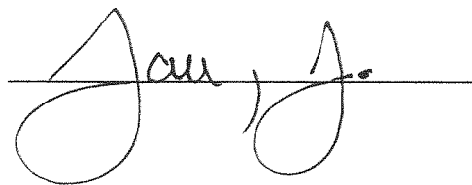
this opinion adequately serves that purpose, we decline to adopt Snetkov's proposed remedy.² We instruct the court to give the correct statutory advisement in the future.

Statement of Additional Grounds

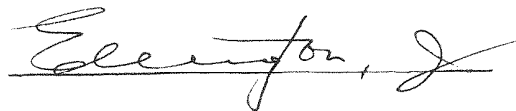
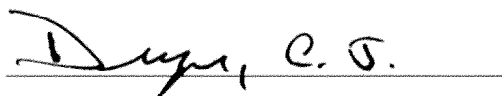
Snetkov raises several additional complaints in his statement of additional grounds (SAG). First, he alleges he was denied a fair trial because the trial court did not grant his request for new defense counsel and because he had a conflict of interest with his assigned counsel. Second, he argues that his Fifth Amendment rights were violated because he was punished "twi[c]e for the same thing."

While a defendant is not required to cite to the record or authority for his SAG, "this court is not required to search the record to find support for the defendant's claims." State v. Meneses, 149 Wn. App. 707, 716, 205 P.3d 916 (2009), review granted in part, 167 Wn.2d 1008 (2009). Here, Snetkov does not sufficiently explain the underlying facts or his argument to enable meaningful review.

We affirm the convictions.



WE CONCUR:



² We note he cites no relevant controlling authority to support the relief requested.

63332-5-1/6